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 Rosemary Mathews and the Proposed Class*

*Attorneys for Plaintiff Jennifer Yick
 and the Proposed Class*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

JENNIFER YICK, on behalf of herself
 and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
 DOES 1-20, inclusive,

Defendants.

Case No. 3:21-cv-00376-VC

CLASS ACTION

**NOTICE OF MOTION, MOTION, AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF JOINT
 MOTION TO:**

(1) CONSOLIDATE RELATED ACTIONS

**(2) APPOINT COTCHETT, PITRE &
 McCARTHY, LLP AND ALTSHULER
 BERZON LLP AS INTERIM CO-LEAD
 COUNSEL, AND PROPOSED
 EXECUTIVE COMMITTEE**

Judge: Hon. Vince Chhabria
 Courtroom: 4 – 17th Floor
 Hearing Date: March 25, 2021
 Hearing Time: 2:00 p.m.

This document also relates to:

CARLOS RODRIGUEZ, on behalf of himself
and a class of others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No.: 3:21-CV-00494-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/20/2021

This document also relates to:

J. MICHAEL WILLRICH, on behalf of
himself and others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
DOES 1-20, inclusive,

Defendants.

Case No.: 3:21-cv-00547-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/22/2021

This document also relates to:

LINDSAY MCCLURE, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
DOES 1-20, inclusive,

Defendants.

Case No.: 3:21-cv-00572-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/25/2021

This document also relates to:

ROLAND OOSTHUIZEN and ROSEMARY MATHEWS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A., and
DOES 1 through 30, inclusive,

Defendants.

Case No.: 4:21-cv-00615-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/26/2021

This document also relates to:

ROBERT L. WILSON, on behalf of himself and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
DOES 1-20, inclusive,

Defendants.

Case No.: 3:21-cv-00699-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/28/2021

This document also relates to:

CHRISTOPHER MOSSON, on behalf of himself and others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
DOES 1-50, inclusive,

Defendants.

Case No.: 3:21-cv-00743-VC

Judge: Hon. Vince Chhabria

Action Filed: 1/29/2021

This document also relates to:

CLARA CAJAS, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and
DOES 1-20, inclusive,

Defendants.

Case No.: 3:21-cv-00869-VC

Judge: Hon. Vince Chhabria

Action Filed: 2/3/2021

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 25, 2021 at 2:00 p.m., before the **Honorable Vince Chhabria**, in Courtroom 4 of the United States District Court for the Northern District of California, located at the Phillip Burton Federal Building, 450 Golden Gate Avenue, 17th Floor, San Francisco, California 94102, plaintiffs Jennifer Yick, Roland Oosthuizen, and Rosemary Matthews (“Plaintiffs”) will and hereby do move the Court for an order consolidating the related actions pursuant to Federal Rule of Civil Procedure 42(a), and appointing the attorneys at **Cotchett, Pitre & McCarthy, LLP** (“CPM”) and **Altshuler Berzon LLP** (“Altshuler Berzon”) (together, “Proposed Lead Counsel”) as interim co-lead counsel in this litigation, and appointing an executive committee. Plaintiffs also will and hereby do move to consolidate with this action all cases involving similar questions of fact and law that have been or subsequently will be filed, as it will promote just and efficient conduct. Fed. R. Civ. P. 42. However, litigations brought by pro se plaintiffs that do not purport to represent a putative class should not be consolidated; instead, these actions should be coordinated with this consolidated class action.

Plaintiffs bring this motion for appointment of class counsel pursuant to Federal Rule of Civil Procedure 23(g). Proposed Lead Counsel meet all the requirements for appointing interim lead counsel. Both CPM and Altshuler Berzon, as well as members of the proposed executive committee, have broad and nationally recognized experience leading complex class actions, including consumer protection class actions of this breadth and nature. Proposed Lead Counsel have the necessary resources to prosecute the litigation in a timely manner and will work cooperatively with other plaintiffs’ and defense counsel to efficiently and effectively manage the litigation, as they have repeatedly done in the past. And, given the work this litigation may entail, the appointment of the proposed executive committee will allow for expeditious resolution of this matter.

Plaintiffs’ motion is based on this notice, the accompanying memorandum of points and authorities, the Joint Declaration of Brian Danitz and Michael Rubin (“Joint Declaration”), and the

1 exhibits thereto, and any additional arguments and evidence that the Court may consider at the
2 hearing.

3 **STATEMENT OF ISSUES TO BE DECIDED**

4 1. Whether the Court should consolidate the related actions representing a purported
5 class alleging similar questions of facts and law under Federal Rule of Civil Procedure 42(a), and
6 grant coordination of actions prosecuted by pro se litigants not purporting to represent a class.

7 2. Whether the Court should appoint Proposed Lead Counsel as interim lead counsel
8 pursuant to Federal Rule of Civil Procedure 23(g).

9 3. Whether the Court should appoint the proposed members of the Executive
10 Committee.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Presently before the Court are eight related putative class actions affecting millions of Californians who have been forced to rely on unemployment insurance issued by the California Employment Development Department (“EDD”) to survive during the coronavirus pandemic. As the financial institution with the exclusive contract to administrate such benefits, Bank of America, N.A. (“Bank of America”) is responsible for safeguarding these funds. Plaintiffs allege that Bank of America has failed in this task, causing irreparable harm to the members of the Class.

In recent months, the news has exploded with stories of EDD benefits recipients who have attempted to use their Bank of America EDD prepaid debit card (an “EDD Cardholder”), only to learn that the money in their Bank of America EDD account (“EDD Account”) is gone—stolen by hackers and criminals exploiting Bank of America’s use of outdated technology. Bank of America failed to protect these EDD accounts and then, contrary to the promises in its EDD cardholder agreement, Bank of America failed to assist the hundreds of thousands of defrauded EDD cardholders, depriving them of their lifeline. Consequently, Plaintiffs have been forced to pursue litigation to ensure that they, and all those similarly situated, receive the protection they so desperately need in the present circumstances.

On February 11, 2021, the Court issued an order relating the eight above-captioned putative class actions, all of which involve the same defendant and similarly defined classes, raise virtually identical legal and factual issues, and seek the same or substantially similar relief. To further achieve judicial efficiency and economy of resources, Plaintiffs in these eight related actions now move for consolidation and propose the robust leadership structure below. To enhance efficiency, each member of a proposed Executive Committee is assigned a defined and nonoverlapping role from the beginning. To ensure the right team, Proposed Lead Counsel undertook a collaborative process to design a structure with input from all counsel. Proposed Lead Counsel created a cohesive and truly diverse team with skills to match the needs of this case and to ensure that the case proceeds on an expedited basis, which is required under the pressing circumstances. As noted in the Joint

1 Declaration, firms that helped organize counsel and protect the class over the past months support
 2 this motion. Plaintiffs therefore respectfully submit that Proposed Lead Counsel, with members of
 3 the Executive Committee, have demonstrated the best understanding of the relevant factual and legal
 4 issues presented in these cases and have the resources and experience to see them through to a
 5 successful and efficient resolution.

6 **II. MOTION TO CONSOLIDATE**

7 Consolidation pursuant to Federal Rule of Civil Procedure 42(a) is proper where actions
 8 “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). “The purpose of consolidation is
 9 not only to enhance efficiency of the trial court by avoiding unnecessary duplication of evidence and
 10 procedures, but also to avoid inconsistent adjudications.” *Chacanaca v. Quaker Oats Co.*, No. C 10-
 11 0502 RS, 2011 WL 13141425, at *2 (N.D. Cal. June 14, 2011) (internal quotation marks and citation
 12 omitted). A “district court has broad discretion to consolidate cases pending in the same district.”
 13 *Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989).
 14 In exercising its broad discretion to consolidate actions under Rule 42(a), a court “weighs the saving
 15 the saving of time and effort consolidation would produce against any inconvenience, delay, or
 16 expense that it would cause.” *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984).

17 Here, there can be no dispute that the eight related actions before the Court present a
 18 multitude of common questions of law and fact. As explained in Plaintiff’s administrative motion to
 19 relate cases, which Bank of America did not oppose, all of the related actions are brought against
 20 Bank of America on behalf of substantially the same proposed class. All of the related actions seek
 21 to remedy Bank of America’s alleged failures to take reasonable steps to protect the named plaintiffs
 22 and putative class members from fraud and to take reasonable steps to ensure that the named
 23 plaintiffs and class members are able to access the public benefits to which they are lawfully entitled.
 24 All of the related actions assert claims for breach of contract, violation of the California Consumer
 25 Privacy Act, Civ. Code § 1798.100 *et seq.*, and violation of the California Unfair Competition Law,
 26 Bus. & Prof. Code § 17200 *et seq.* Many of the related actions also assert claims of negligence,
 27 breach of implied contract, breach of the implied covenant of good faith and fair dealing, and
 28

1 violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.* based on substantially
2 identical factual allegations.

3 Moreover, consolidation will significantly conserve judicial resources, while generating no
4 (or at most *de minimis*) inconvenience, delay, or expense. Plaintiffs seek to consolidate the cases at
5 the outset of litigation. All of the cases were only recently filed, and Bank of America has not yet
6 responded to any of them. A consolidated complaint will establish a single, uniform class definition,
7 streamline the issues in this complex class action, and eliminate the confusion and delay that may
8 result from prosecuting related class action cases separately. Consolidation will also conserve
9 judicial and party resources and expedite resolution of this matter by avoiding duplicative class
10 certification proceedings, discovery disputes, dispositive motions, and trial proceedings. *See, e.g.,*
11 *Chacanaca*, 2011 WL 13141425, at *2 (granting consolidation of class actions under similar
12 circumstances).

13 For all these reasons, all putative federal class actions already before this Court, those that
14 will be transferred to this Court, and those that will be deemed related by this Court should be
15 consolidated.

16 While the related class actions should be consolidated, certain actions involving *pro se*
17 litigants that are not seeking to represent a proposed class should not be consolidated in this
18 litigation. Instead, these actions should be coordinated with this litigation in order to reduce
19 duplication of tasks and lessen confusion and delay. If so ordered, Proposed Lead Counsel are
20 committed to coordinating with the *pro se* plaintiffs efficiently, fairly, and compassionately.

21 **III. MOTION TO APPOINT LEAD COUNSEL AND EXECUTIVE COMMITTEE**

22 **A. Proposed Lead Counsel and Committee Structure**

23 Proposed Lead Counsel and the Executive Committee was crafted through a transparent and
24 collaborative process open to any plaintiffs' counsel who had a case on file in this District and who
25 wished to participate. These efforts are detailed in the Joint Declaration at ¶¶ 3-6. The goal was to
26 create a structure and arrangement that would be efficient, with pre-identified roles assigned to the
27 appropriate attorneys. Great care was also given to gender diversity (two thirds of the Executive
28

Committee is run by women) and geographic diversity (firms based in Southern California and the Bay Area). Finally, special consideration was given to attorneys who demonstrated a willingness during the process “to fulfill their obligations as advocates in a manner that will foster and sustain good working relations among fellow counsel and the court.” Manual for Complex Litigation (4th ed. 2004) § 10.21 (the “Manual”); *see also id.* (“The added demands and burdens of complex litigation place a premium on attorney professionalism.”).

1. Proposed Lead Counsel

Plaintiffs propose that the law firms of Cotchett, Pitre & McCarthy LLP and Altshuler Berzon LLP serve as interim lead counsel for the putative class. Brian Danitz of CPM and Michael Rubin of Altshuler Berzon will serve as the primary contacts for Proposed Lead Counsel.

For over 50 years, CPM has dedicated its services to prosecuting or defending socially just actions. Repeatedly recognized by the National Law Journal, CPM has earned a national reputation for the breadth of its practices and the diversity of its clients. CPM has secured billions of dollars for its clients and classes, and its attorneys have been honored with such prestigious accolades as induction to the American College of Trial Lawyers, named as Top 100 attorneys by “Super Lawyers” and the Daily Journal, and service on government commissions and the boards of numerous non-profit organizations. A firm biography is attached as Exhibit 1 to the Joint Declaration.

Since its founding in 1978, Altshuler Berzon has been a leader at the forefront of protecting workers’ and consumers’ rights. Altshuler Berzon has obtained multimillion-dollar judgments and settlements, as well as court-ordered and negotiated injunctive relief on behalf of millions of consumers and workers. The firm also frequently handles complex and high-stakes class action appeals and has secured numerous groundbreaking decisions from the Ninth Circuit, California Supreme Court, and U.S. Supreme Court. Altshuler Berzon has earned a nationwide reputation for litigation excellence and last year was named one of California’s “Top Boutique Law Firms” by the Daily Journal. The firm’s attorneys are also routinely recognized by the Daily Journal and “Super Lawyers” as among the best lawyers in California; Michael Rubin, for example, has won an

unprecedented seven “California Lawyer of the Year” awards from the Daily Journal for both his trial and appellate work. The firm’s biography is attached as Exhibit 2 to the Joint Declaration.

Proposed Lead Counsel law firms have decades of litigation experience and have served as lead or co-lead counsel in scores of class and complex litigation actions, both in this District as well as throughout the country. Proposed Lead Counsel have excellent credentials and the requisite experience to serve as interim co-lead counsel for the proposed class. Their experiences as class action and multidistrict litigation counsel, as well as their intimate knowledge of technological and consumer protection issues, will ensure that the action will be prosecuted efficiently and effectively. The Court should be confident that Proposed Lead Counsel law firms will effectively represent and guide the plaintiff class toward a resolution that is in their best interests. And because both firms have offices in this District, the proposed leadership structure does not need to include a Court liaison.

2. Proposed Members of Plaintiffs’ Executive Committee

A committee structure is required due to the scope of this action, which encompasses hundreds of thousands of EDD Cardholders and Accounts. Extreme care and purposeful deliberation were taken in the selection of the proposed members of the Plaintiffs’ Executive Committee. Indeed, this grouping mirrors the diversity of the Bar and the plaintiff class, following guidance from the Duke Law Center for Judicial Studies *Standards and Best Practices for Large and Mass-Tort MDLs*, which encourage “appointment of an experienced slate of attorneys” who will “fairly represent all plaintiffs, keeping in mind the benefits of diversity of experience, skills, and backgrounds.” Combining their experience with the resources available from their respective law firms, members of the Executive Committee will ensure effective and efficient prosecution of the litigation. The proposed members are:

Chair: Mary Alexander of Mary Alexander & Associates, P.C., will oversee the Executive Committee and be responsible for obtaining and maintaining time records and communications to counsel.

1 **Law and Briefing:** Francis Bottini Jr. of Bottini & Bottini, Inc., will coordinate the research
 2 and preparation of all pleadings and motions and assist in the preparation of oral arguments at any
 3 hearings.

4 **Defensive Discovery and Plaintiff Coordination:** Gayle Blatt of Casey Gerry Francavilla
 5 Blatt & Penfield LLP will coordinate all discovery obligations of and communications with Plaintiffs
 6 and the Class.

7 **Offensive Discovery and ESI Coordination:** Natasha N. Serino of Schack Law Group,
 8 together with Karin Swope of CPM, will coordinate all discovery propounded on behalf of the
 9 Plaintiffs and the Class and coordinate ESI practices generally.

10 **Third-Party Discovery:** Kristin Kemnitzer of Kemnitzer, Barron & Krieg will coordinate
 11 all third-party discovery propounded on behalf of the Plaintiffs and the Class, assisted by P. Terry
 12 Anderlini of Anderlini & McSweeney LLP.

13 **Experts:** Thomas Fraysse of Knox Ricksen LLP will handle and coordinate all expert
 14 discovery and issues.

15 **Damages:** Jean Martin of Morgan & Morgan will coordinate efforts concerning damages.

16 These law firms were selected for their roles based on their knowledge, resources, and
 17 experience. This is especially warranted given the amount of work this litigation may entail and the
 18 need for expeditious resolution of this matter. A biography of each of the individuals and/or his or
 19 her firm is attached as Exhibits 3 through 10 of the Joint Declaration.

20 **B. The Court Should Adopt the Proposed Structure**

21 The Court “may designate interim counsel to act on behalf of a putative class before
 22 determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). “[D]esignation
 23 of interim counsel clarifies responsibility for protecting the interests of the class during
 24 precertification activities, such as making and responding to motions, conducting any necessary
 25 discovery, moving for class certification, and negotiating settlement.” Manual § 21.11. Rule
 26 23(g)(1)(A) of the Federal Rules of Civil Procedure identifies four factors to be considered by courts
 27 when selecting interim class counsel:

- (i) The work counsel has done in identifying or investigating potential claims in the action;
- (ii) Counsel's experience in handling class action, other complex litigation, and the types of claims asserted in the action;
- (iii) Counsel's knowledge of the applicable law; and
- (iv) The resources that counsel will commit to representing the class.

Rule 23(g)(1)(B) further provides that courts may "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Such considerations include whether proposed interim class counsel have worked cooperatively with opposing counsel and the court, and whether counsel commands the respect of colleagues. *See* Manual § 10.224.

Here, Plaintiffs' counsel have met and conferred with one another to discuss what would be most efficient, fair, and serve the best interests of the class. *Jt. Decl.* ¶¶ 3-5. The proposed Lead Counsel and Executive Committee structure is the product of those collaborative discussions.

1. Rule 23(g)(1)(A)(i): "The work counsel has done in identifying or investigating potential claims in the action"

CPM filed the first of Plaintiffs' related actions in the Northern District of California after conducting a thorough investigation, which included obtaining and analyzing Bank of America's exclusive contract with EDD, as well as Bank of America's customer agreements, SEC filings, press releases, and other public statements. Not only has Proposed Lead Counsel identified and investigated the claims against Bank of America, but since filing the Complaint they have endeavored to uncover additional information about underlying allegations. To that end, CPM has submitted additional public record requests to both EDD and the State Auditor, and reviewed relevant legislative hearings and agency reports, including: "*Employment Development Department: EDD's Poor Planning and Ineffective Management Left It Unprepared to Assist Californians Unemployed by COVID-19 Shutdowns*" (Jan. 26, 2021), and "*Employment Development Department: Significant Weaknesses in EDD's Approach to Fraud Prevention Have Led to Billions of Dollars in Improper Benefit Payments*" (Jan. 28, 2021). *Jt. Decl.* ¶ 8.

1 Additionally, the filing of the *Yick* complaint generated substantial interest by the public and
 2 the press. As a result, CPM has communicated with **over seven hundred** potential plaintiffs who
 3 reached out to CPM following the filing of the Complaint, several of whom have retained CPM and
 4 intend to serve as class representatives in this matter. These discussions reveal strong common
 5 threads and detail facts which Proposed Lead Counsel intend to incorporate into a consolidated
 6 amended complaint. Affidavits by many of these EDD Cardholders will also be used in the Motion
 7 for Preliminary Injunction which Proposed Lead Counsel are currently preparing. Jt. Decl. ¶ 9.

8 **2. Rule 23(g)(1)(A)(ii): “Counsel’s experience in handling class action, other**
 9 **complex litigation, and the types of claims asserted in the action”**

10 Proposed Lead Counsel and proposed members of the Executive Committee easily meet this
 11 criterion. CPM has obtained billions of dollars in recoveries for the classes it has represented. For
 12 instance, as co-lead counsel, CPM secured a combined \$219 million in *In re Medical Capital*
 13 *Securities Litigation*, No. SA CV 09-1048-DOC-RNB (C.D. Cal.), one of the largest recoveries
 14 against indenture trustees in U.S. history and the largest Ponzi recovery in California history. CPM
 15 also secured a \$77 million settlement as lead counsel in *In re Static Random Access Memory (SRAM)*
 16 *Antitrust Litigation*, No. 4:07-md-01819-CW (N.D. Cal.). In *In re Bextra and Celebrex Marketing*
 17 *Sales Practices and Product Liability Litigation*, No. MDL-1699 (N.D. Cal.), CPM, as co-lead trial
 18 counsel, secured \$894 million to settle the consolidated injury and class action cases against Pfizer.
 19 As co-lead counsel for the end-payor plaintiffs in *In re Automotive Parts Antitrust Litigation*, Case
 20 No. 2:12-md-02311-SFC (E.D. Mich.), CPM helped recover over \$1.2 billion. And recently, CPM
 21 secured a settlement that provides for a non-reversionary minimum class settlement amount of \$310
 22 million, with a maximum class settlement amount of \$500 million in *In re Apple Inc. Device*
 23 *Performance Litigation*, No. 5:18-md-02827-EJD (N.D. Cal.). *See* Jt. Decl., Ex. 1.

24 Altshuler Berzon likewise has a long record of achieving outstanding results in consumer
 25 protection class actions and other complex litigation, as well as on appeal. For example, as co-lead
 26 counsel, Altshuler Berzon secured a landmark \$115 million settlement in 2018 in the multi-district
 27 litigation *In re Anthem, Inc. Data Breach Litigation*, No. 15-MD-02617-LHK (N.D. Cal.), which
 28

1 was at the time the largest settlement ever reached in a data-breach class action. The MDL involved
2 80 million class members, hundreds of consumer class actions filed around the country, and over 50
3 plaintiff law firms and four defense firms. Altshuler Berzon also has substantial experience litigating
4 consumer protection class actions against banks and other financial institutions in particular,
5 including claims brought under California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et*
6 *seq.* ("UCL"), common-law claims of negligence and breach of contract, and statutory claims. In
7 addition to *In re Anthem*, other representative cases include *Nobles v. MBNA Corp.*, No. C06-3723-
8 CRB (N.D. Cal.), in which the firm settled a California consumer class action alleging that a bank
9 misleadingly offered consumer lines of credit without disclosing hidden costs and credit impacts,
10 and *Fanning et al. v. HSBC Card Services Inc. et al.*, No. 12-cv-00885-JVS (C.D. Cal.) and *Lindgren*
11 *v. HSBC Card Services Inc. et al.*, No. 14-cv-05615-JVS (C.D. Cal.), in which the firm successfully
12 settled a statewide class action on behalf of California credit card holders alleging the bank secretly
13 recorded their telephone conversations without their consent. *See* Jt. Decl., Ex. 2.

14 Similarly, each member of the Plaintiffs' Executive Committee has experience in class
15 actions and complex litigation, and is well matched for the role to which each member has been
16 assigned.

17 Mary Alexander has earned a national reputation for her work protecting consumer rights.
18 She has held leadership roles in high-profile class actions and obtained some of the largest and
19 highest profile verdicts and settlements in California over the course of her career. Her dedication to
20 her clients has won her numerous awards. She is a past president of both the Association of Trial
21 Lawyers of America (now American Association for Justice) and Consumer Attorneys of California,
22 and, in 2021, Ms. Alexander was inducted into the Law Dragon 500 Hall of Fame. *See* Jt. Decl.,
23 Ex. 3.

24 Francis A. Bottini, Jr., Managing Partner of Bottini & Bottini, Inc., has exclusively practiced
25 complex class action litigation for over 26 years, during which he has served as Lead or Co-Lead
26 Counsel in consumer, securities, and antitrust cases which have recovered hundreds of millions of
27 dollars for class members. Most recently, in 2020, Bottini & Bottini was Co-Lead Counsel in *In re*
28

1 *Alphabet Inc. Shareholder Derivative Litig.*, Lead Case No. 19CV341522 (Santa Clara Sup. Ct.),
 2 which resulted in a groundbreaking settlement, including Google's commitment to eliminate
 3 mandatory arbitration in cases alleging sexual harassment and discrimination; the establishment of
 4 a Diversity, Equity, & Inclusion Council including two members selected by Plaintiffs' counsel; and
 5 an agreement by Google to spend \$310 million over ten years on workplace initiatives designed to
 6 eliminate sexual harassment and discrimination and initiatives that support diversity, equity, and
 7 inclusion. Bottini & Bottini also served as Co-Lead Counsel in *In re Snap, Inc. Securities Cases*,
 8 JCCP No. 4960 (Los Angeles Sup. Ct.), in which the Court has granted preliminary approval of a
 9 settlement providing a \$32,812,500 recovery for shareholders who bought stock in Snap's IPO. *See*
 10 *Jt. Decl., Ex. 4.*

11 Gayle Blatt chairs Casey Gerry's complex litigation team, having more than 30 years of
 12 experience vindicating the rights of consumers and injury victims. She recently served as one of five
 13 plaintiffs' lawyers leading the Yahoo! data breach litigation (*In re Yahoo! Inc. Customer Data*
 14 *Security Breach Litigation*, Case No. 16-MD-02752 (N.D. Cal.). Ms. Blatt also recently served on
 15 the Executive Committee in *In re Apple Inc. Device Performance Litigation*, 18-md-02827-EJD,
 16 MDL No. 2827 (N.D. Cal.) and will serve the putative class well by coordinating plaintiff discovery.
 17 She brings a breadth of experience and is currently serving as class counsel in the *In re Citrix Data*
 18 *Breach Litigation*, Case No. 19-cv-61350-RKA (S.D. Fla.) (preliminary approval granted), and
 19 served on the law and briefing committee in the consolidated class action *Adkins v. Facebook, Inc.*,
 20 Case No. 18-05982-WHA (N.D. Cal.) (preliminary approval granted.) In addition, she serves on the
 21 Steering Committee in the *In re Intel Corp. CPU Marketing, Sales Practices and Product Liability*
 22 *Litigation*, Case No. 3:18-md-02828-SI (D. Or.), where she has participated in the vetting and
 23 coordination of nationwide plaintiffs. *See Jt. Decl., Ex. 5.*

24 Natasha Serino of Schack Law Group has successfully represented aggrieved consumers,
 25 employees, and tort victims, including as lead trial counsel against Alaska Airlines, which resulted
 26 in a \$25 million verdict for flight attendants. Over her career she has also coordinated litigation in
 27 data breach, fire, environmental tort, employment, and personal injury litigation, and currently
 28

1 serves as liaison counsel for *In re Canyon Fires Litigation*. See Jt. Decl., Ex. 6.

2 Kristin Kemnitzer is a managing partner at Kemnitzer Barron & Krieg LLP (KBK Legal).
3 The firm champions the rights of consumers and fights economic injustice. Ms. Kemnitzer has
4 represented hundreds of thousands of consumers in class actions against financial institutions. KBK
5 Legal attorneys have been appointed lead counsel in over 250 class actions, have obtained waivers
6 of over \$3 billion in uncollectable debt, and have obtained recovery of over \$500 million for
7 California consumers. See Jt. Decl., Ex. 7.

8 P. Terry Anderlini has over 50 years of experience representing clients in personal injury,
9 consumer, and malpractice cases. In 2018 he was named the San Mateo County Trial Lawyer of the
10 Year and has served as the President of the State Bar of California, the San Mateo County Bar
11 Association, and the Consumer Attorneys of California. He enjoys a well-earned reputation as one
12 of the leading trial attorneys in Northern California. See Jt. Decl., Ex. 8.

13 Thomas Fraysse of Knox Ricksen LLP leads the firm's qui tam practice that focuses on fraud
14 and has successfully litigated dozens of complex actions recovering millions for clients as a result
15 of a string of multimillion-dollar judgments. His work, litigation experience and trial ability has
16 earned him recognition by the National Law Journal, the Daily Journal, and his peers, including
17 membership in the American Board of Trial Advocates. Besides being effective trial advocates,
18 Knox Ricksen LLP has pioneered the use of data analytics in presenting complicated matters to
19 juries. Mr. Fraysse currently serves as co-lead counsel in mass tort litigation involving the
20 manufacture, distribution, and implantation of counterfeit spinal fixation devices used in spinal
21 fusion surgeries. See Jt. Decl., Ex. 9.

22 Jean Martin of Morgan & Morgan concentrates her practice on data breach and consumer
23 class actions and presently serves as interim co-lead counsel in *In re Morgan Stanley Data Security*
24 *Litigation*, 1:20-cv-05914 (S.D.N.Y.), *In re Ambry Genetics Data Breach Litigation*, No. 20-cv-
25 00791 (C.D. Cal.), and *In re Brinker Data Incident Litigation*, No. 18-cv-686 (M.D. Fla.). Using
26 her background in econometrics, she is often called upon to work with experts to develop damages
27
28

1 modeling as she is proposed to handle on behalf of the putative class in this case. *See* Jt. Decl.,
 2 Ex. 10.

3 As demonstrated by the firm résumés and biographies attached to the Joint Declaration,
 4 Proposed Lead Counsel and members of the Executive Committee clearly have the requisite
 5 experience and knowledge necessary to effectively advance this litigation.

6 **3. Rule 23(g)(1)(A)(iii): “Counsel’s knowledge of the applicable law”**

7 As indicated by their experience handling class actions and the significant recoveries
 8 therefrom, it is undisputed that Proposed Lead Counsel and members of the Plaintiffs’ Executive
 9 Committee are knowledgeable regarding the applicable law. Indeed, attorneys at CPM are some of
 10 the founding members of the Consumer Attorneys of California and of Public Justice. Attorneys at
 11 Altshuler Berzon have served as lead or co-lead counsel in multiple cases alleging violation of
 12 consumer protection laws. From their impeccable résumés and careful vetting, the Court can be
 13 assured that each of the lawyers selected for this matter is knowledgeable of the law and will be able
 14 to efficiently handle all aspects of this litigation.

15 **4. Rule 23(g)(1)(A)(iv): “The resources that counsel will commit to**
 16 **representing the class”**

17 This litigation asserts federal and state statutory claims, and numerous common law claims
 18 arising under California law. More importantly, the putative class consists of hundreds of thousands
 19 of EDD Cardholders throughout California in need of timely relief. A litigation of this magnitude
 20 “justifies the pooling of resources and experience.” *In re Google Inc. Cookie Placement Consumer*
 21 *Privacy Litig.*, No. 12-2358-SLR, 2012 WL 5833604, at *1 (D. Del. Nov. 16, 2012) (citing *In re*
 22 *Exford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 46 (S.D.N.Y.1998)); *Outten v. Wilmington*
 23 *Trust Corp.*, 281 F.R.D. 193, 199 (D. Del. 2012); *In re Dynamic Random Access Memory (DRAM)*
 24 *Antitrust Litig.*, No. M 02–1486 PJH, 2006 WL 1530166, at *11 (N.D. Cal. June 5, 2006)); *see also*
 25 *Lowery v. Spotify USA Inc.*, No. CV 15-09929-BRO (RAOx), 2016 WL 6818756, at *5 (C.D. Cal.
 26 May 23, 2016) (noting the Court “must appoint the applicant best able to represent the interests of
 27 the class”) (citation omitted).

1 Here, Proposed Lead Counsel and members of the Executive Committee have the resources
 2 necessary to finance a case of this magnitude. Indeed, having been responsible for achieving some
 3 of the largest class action recoveries in some of the most complex, high-profile class actions,
 4 Proposed Lead Counsel and members of the Executive Committee understand what is required to
 5 undertake a litigation of this size and will commit whatever resources are necessary to achieve a
 6 favorable result for the class.

7 At the same time, Proposed Lead Counsel and members of the Executive Committee are
 8 aware of the need to control costs and expenses. Should this structure be approved by the Court,
 9 Proposed Lead Counsel will, within 10 business days, submit a timekeeping and cost reporting
 10 protocol for approval by the Court that would require all plaintiffs' counsel to maintain a
 11 contemporaneous record of their time and expenses incurred in connection with this litigation. And,
 12 to the extent that there are any issues as to fees and expenses should the litigation be successfully
 13 resolved, the Court will "have an independent obligation to ensure that" fees and expenses are
 14 "reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prod.*
 15 *Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011).

16 **5. Rule 23(g)(1)(B): "Any other matter pertinent to counsel's ability to**
 17 **fairly and adequately represent the interests of the class"**

18 Given the complexity of this litigation, the number of putative class members, its scope, and
 19 the need to proceed in an expedited manner, it is clear that this litigation requires a robust structure.
 20 When these facts are present, courts often approve similarly sized and structured leadership. For
 21 instance, in *Volkswagen*, Judge Breyer appointed 22 individuals and their law firms to a steering
 22 committee, specifically noting that "the Court believes this is an appropriate number given the
 23 amount of work this litigation may entail and the need for an expeditious resolution of this matter."
 24 *See* Pretrial Order No. 7 [ECF No. 1084]. Judge Breyer also approved approximately 100 additional
 25 law firms over the course of the Volkswagen litigation. *See* Pretrial Order No. 11 [ECF No. 1254].
 26 In *In re Digitek Products Liability Litigation*, No. 2:08-md-01968 (S.D. W. Va.), the court appointed
 27 a three-firm co-lead counsel and steering committee of 19 individuals and their law firms. *See id.*,
 28

1 Pretrial Order No. 4, dated Nov. 5, 2008 [ECF No. 51-1]. The court later added three more
2 individuals and their law firms to the steering committee (with one resignation), together comprising
3 24 individuals and their respective law firms. *See id.*, Pretrial Order No. 23, dated May 29, 2009
4 [ECF No. 129]. And, in *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico,*
5 *on April 20, 2010*, No. 2:10-md-02179-CJB-SS (E.D. La.), the court appointed a 19 member
6 plaintiffs' steering committee. *See id.*, Pretrial Order No. 8, dated Oct. 8, 2010 [ECF No. 506]. Given
7 the size and scope of this litigation, the structure brought forth by Plaintiffs is therefore
8 commensurate to the needs of the case.

9 Finally, where the majority of plaintiffs' counsel agree to a leadership structure, courts
10 generally approve the structure based on the concept of "private ordering." Manual § 21.272; *see In*
11 *re Lenovo Adware Litig.*, No. 15-md-02624, 2015 WL 10890657, at *2 (N.D. Cal. July 27, 2015)
12 (finding that support of majority of plaintiffs and counsel is "indicative of their ability to work
13 cooperatively on behalf" of the plaintiffs). As long as the proposal for leadership is fair, proposes
14 qualified class counsel, and has opportunities for representation for all firms, then the efforts of
15 plaintiffs' counsel to coordinate amongst themselves is something that is to be encouraged and given
16 significant deference. Manual § 10.22.

17 **IV. CONCLUSION**

18 For the reasons indicated, the Court should grant consolidation and/or coordination of the
19 actions. Moreover, the Court should appoint Proposed Lead Counsel and the proposed Executive
20 Committee. Proposed Lead Counsel has demonstrated that it is best equipped to serve as interim co-
21 lead counsel in this litigation, with the assistance and knowledge provided by the members of the
22 proposed Executive Committee. The firms have demonstrated the best understanding of the relevant
23 factual and legal issues presented in these cases and have the resources and experience to see them
24 through to a successful and efficient resolution.

Respectfully submitted,

Dated: February 12, 2021

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Dated: February 12, 2021

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ATTESTATION OF E-FILED SIGNATURE

I, Brian Danitz, am the ECF user whose identification and password are being used to file this NOTICE OF MOTION, MOTION, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF JOINT MOTION TO: (1) CONSOLIDATE RELATED ACTIONS; (2) APPOINT COTCHETT, PITRE & MCCARTHY, LLP AND ALTSHULER BERZON LLP AS INTERIM CO-LEAD COUNSEL, AND PROPOSED EXECUTIVE COMMITTEE. Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that all other signatories to this document concurred in its filing.

/s/ Brian Danitz
BRIAN DANITZ